IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/07/2003

CORAM

THE HONOURABLE Mr. JUSTICE V. KANAGARAJ

Crl.O.P.No.21768 of 2002
and
Crl.M.P.No.9006 of 2002

1. M/s. S&S Industries and Enterprises Limited
rep. by its Managing Director,

2. A.R. Santhanakrishnan
3. V.S. Narayanan
4. N. Kannan .... Petitioners

-Vs-

M/s. Agri Development Finance (Tamilnadu) Ltd.
2-B Century Plaza,
560-562, Anna Salai,
Chennai 600 018
rep. by Mr. V. Srinivasan .... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. for the grant of relief as stated therein.

For Petitioners : Mr. S. Natarajan

For Respondent : M/s. Anand, Abdul and Vinod Associates

:O R D E R

The above Criminal Original Petition has been filed by the petitioners praying to quash the complaint in C.C.No.4165 of 1999 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai 15 on certain grounds such as that the respondent had presented the cheque dated 04.08.1998 and the same on presentation was allegedly returned unpaid on 10.08.98; that a demand notice dated 24.08.1998 was issued by registered post on 25.8.98, demanding payment for the said dishonoured cheque and the same was received by the petitioner on 27.8.9 8; that the respondent gave 15 days notice for the due repayment and hence the complaint ought to have been filed within one month thereafter i.e. on or before 12.10.98; that however the respondent once again presented the cheque on 16.11.98 and the same was allegedly returned unpaid on the same day itself and on 18.11.98, the

respondent issued a notice demanding payment for the said dishonoured cheque; that this was received by the petitioners on 24.11.98 and the complaint was presented somewhere during January 1999.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondent as well.

3. Learned counsel for the petitioners submits that it is well settled as per the judgment of the Supreme Court reported in AIR 1998 page 3043 that a cheque can be presented any number of times within its validity regarding which there is no controversy. But for a case to be made out under Section 138 of N.I. Act, once notice is given, the time limit prescribed by the Negotiable Instrument Act will come into operation; that in this view, the notice having been issued on 24.0 8.1998 and received on 27.8.98, the complaint ought to have been filed on or before 12.10.98, whereas

the complaint was filed only during January 1999 based on the 2nd demand notice issued by the respondent. Hence, the complaint is thus barred by limitation and is liable to be quashed.

4. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the short question that is to be answered in the case in hand is ` whether in a cheque bounce case on account of insufficiecy of funds, as contemplated under Sections 138 to 142 of the Negotiable Instruments Act, the payee or the holder of the cheque in due course is entitled to exercise his right to proceed against the drawer on a second presentment of the cheque and bounced for want of sufficient funds in the bank so as to honour the cheque in spite of having already sent the same for collection and dishonoured for the reason of insufficiency of funds?'

5. So far as Section 138 of the Negotiable Instruments Act is concerned, on presentment of the cheque, as contemplated under Section 138 (a), in accordance with Section 138(b), the payee or the holder in due course of the cheque must make a demand for the payment of the cheque amount by issuing a notice in writing to the drawer within fifteen days of the receipt of information from the bank regarding the return of the cheque as unpaid and demanding the cheque amount to be paid in fifteen days from the date of receipt of the notice by the drawer and on such compliance being done and in spite of such notice issued, if the drawer fails to make the payment o f the said amount to the payee or the holder in due course within the said 15 days of the receipt of the said notice as it is required under Section 138(c) of the Act, the cause of action would arise from the date of the expiry of the time given for payment.

6. On failure of compliance of the requirement of notice thereafter within one month from the date on which the cause of action has arisen under Section 138(c), the complaint has to be lodged before the competent court of law as stipulated under Section 142(b) of the Act.

7. These are the relevant provisions of law that are to be

taken care of while filing a complaint on dishonour of cheques for prosecution of the drawer under Section 138 of the Negotiable Instruments Act. The question that is to be decided in the case in hand is that `in spite of the cheques having been presented once and dishonoured for the reason of insufficiency of funds, whether issuing the notice contemplated under Section 138(b) of the Act on a second presentment of the same cheque, would a second cause of action arise so as to issue the statutory notice on the second presentment and on failure to file the complaint before the Court?'

8. In this case, the petitioner would allege that on the first presentment of the cheques before the Bank was returned unpaid on 10.8.19 98, based on which the respondent had also issued notice dated 24.8.1 998 on the bounced cheque as contemplated under Section 138(b) of the Negotiable Instruments Act and therefore the cause of action had arisen from the date on which the 15 days time contemplated therein lapsed from the date of receipt of the said notice by the drawer and thereafter within one month, the respondent should have come forward to file the complaint before the Magistrate concerned in compliance of Section 142(b) of the Negotiable Instruments Act and therefore a second cause of action would not arise as the respondent has done in the case in hand, on a re-presentment of the cheque again on 16.11.1998 and for issuing a second notice on 18.11.1998 absolutely no legal backing and hence the petitioner would seek to quash the proceeding initiated by the respondent and taken on file by the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.4165 of 1999.

9. Following the judgments of the Full Bench of the Kerala High Court and that of the Honourable Apex Court as brought forth on the part of the petitioner above and giving effect to all these legalities, the only decision that could be arrived at in the above criminal original petition is that no second cause of action will run since the respondent has already exhausted or allowed to lapse the time permitted by law in filing the complaint within such time particularly as contemplated under Sections138(b) and 142(b) of the Act and therefore this Court is left with no option but to quash the proceedings pending on the file of the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.4165 of 1999 initiated by the respondent on the second presentment and dishonour of the cheques on 16.11.1998 and followed by the notice dated 18.11.1998 which are absolutely bereft of any legal consequence and hence the following order:

In result,
(i)the above criminal original petition succeeds and the same is allowed.
(ii)The proceedings in C.C.No.4165 of 1999 pending on the file of the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai are hereby quashed.
Consequently, Crl.M.P.NO.9006 of 2002 is also dismissed.

Index: Yes
Internet: Yes
sl

To

The XVIII Metropolitan Magistrate,
Saidapet,
Chennai-15.